

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CA07-1013

March 5, 2008

HART'S MANUFACTURING COMPANY  
and RISK MANAGEMENT RESOURCES  
APPELLANTS

AN APPEAL FROM ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [F304608]

V.

DEBRA EDINGTON  
APPELLEE

AFFIRMED

On August 17, 2007, the Commission affirmed and adopted the finding of an Administrative Law Judge (ALJ) that Debra Edington was entitled to fifteen-percent wage-loss disability and to continued medical treatment from Dr. Maurice Smith. Hart's Manufacturing Company and its carrier, Risk Management Resources, challenge the sufficiency of the evidence to support both awards. They also contend that appellee's claims were barred by the applicable statute of limitations. We affirm, holding (1) that appellants failed to present a record sufficient to review their statute-of-limitations defense, (2) that appellee presented sufficient evidence to support the wage-loss disability award despite evidence of subsequent nonwork-related injuries, and (3) that appellee presented sufficient evidence to support entitlement to additional medical treatment despite evidence of subsequent nonwork-related injuries.

*Factual and Procedural History*

The facts are largely undisputed. At the time of the hearing, appellee was fifty years old and had a GED. She had no vocational or specialized training and had worked three factory jobs during her adult life. She sustained an admittedly compensable injury on June 8, 2002, when she slipped, fell backwards, and injured her tail bone in a fall on a concrete floor. Diagnostic studies showed that appellee had a herniated disc, and she was referred to orthopedic surgeons, who treated her conservatively and permitted her to continue working. During the early period of treatment, appellee never missed a day of work except for doctor appointments, and she worked ten to twelve hours of overtime per week.

On or about October 18, 2004, appellee's back popped after she bent to put an item in her refrigerator at home. The pain caused her to go to the ground. The next morning, she was instructed to go to the Corning Clinic, where she was prescribed a Medrol Dosepak, Flexeril, and Naprosyn. She later received a call, stating that her injury was not work-related, and appellants ceased paying for medical treatment. At that time, appellee hired an attorney, who filed a claim for benefits in November 2004. The parties met for a settlement hearing in May 2005, but appellee rejected the settlement. Appellee suffered a second herniated disc on March 30, 2006, when she raised her arm to wipe a cabinet at home. She opined that she was lucky with respect to this injury because it did not cause her to be bedfast, but she stated that she was slow and still in pain when she returned to see the doctor the following May. At the time of the hearing, appellee was not drawing disability benefits, but she had applied for social-security disability.

The medical records presented to the ALJ show that on February 4, 2003, appellee underwent a lumbar transforaminal epidural block. She presented to neurosurgeon Maurice Smith on March 19, 2003, and reported no relief from the block, noting that the only pain relief she had was when the block wore off. An MRI showed disc herniation at L5-S1

paracentral and on the left, which abutted the S1 nerve root. It also revealed a central disc bulge at L4-5 and a far lateral disc bulge at L3-4 on the left. Dr. Smith opined that appellee's pain was attributable to the L5-S1 disc. On that day, he placed her at maximum medical improvement and assessed a nine-percent impairment rating to the body as whole. Dr. Smith also imposed medium work restrictions (20 to 50 pounds occasionally, 10 to 25 pounds frequently, or 10 pounds constantly). Appellants paid permanent-partial-disability benefits.

Appellee returned to Dr. Smith on August 20, 2003, and reported that she had been doing well, though she reported intermittent burning pain over her low back and pain in her left knee when she stood for extended periods. Dr. Smith noted that appellee's disc herniations had responded well to aggressive non-operative care and opined that no further work up was needed. Appellee's next visit was July 28, 2004, where she reported that she was not having much pain, but she complained that her right leg had been giving out. A new MRI obtained August 5, 2004, showed disc herniation at L5-S1 and a small bulge at L4-5, but it showed no right-sided nerve root compression. Dr. Smith did not recommend operative intervention and opined that appellee could use over-the-counter ibuprofen for the pain.

Dr. Smith saw appellee on October 28, 2004, ten days after her first at-home incident. He noted, "This very well may be her previous disc herniations," but stated that he needed to obtain a new MRI. The new MRI, read by Dr. Smith on November 16, 2004, showed that the protrusion at L3-4 was smaller than that on the previous MRI and that there was little change at L5-S1. The protrusion at L4-5 was also similar, but Dr. Smith noted a new inferior migration of a disc fragment paracentral and on the left side, which was not present on the previous MRI. Dr. Smith prescribed physical therapy and took appellee off work. She returned on January 19, 2005, and reported that she was feeling better after only three weeks of therapy. Dr. Smith noted, "She certainly is not what she was before her exacerbation, but

she is making progress.” Appellee next presented to Dr. Smith on February 22, 2006, where she reported a little increased pain, but was otherwise doing well. Dr. Smith released her to work with no restriction on March 8, 2005; however, he did so after appellee told him that she needed the release to return to work. During her testimony, appellee explained that she thought that the release pertained only to the additional restrictions placed on her, not to the permanent restrictions placed in March 2003.

Finally, appellee presented to Dr. Smith for the first time after her March 2006 incident on May 3, 2006. She reported pain down her leg on the right side. Dr. Smith noted, “This is really the first time she has been having right-sided pain. All of her symptoms before have been on the left.” Dr. Smith recommended another MRI, but because she no longer had insurance, she declined the MRI.

In an opinion dated April 17, 2007, the ALJ found that appellee’s claim was not barred by the statute of limitations. He stated that appellee claim was one for additional benefits, though it was not indicated on the claim form, and that she made her claim within one year from the date of the last payment of compensation. He then awarded appellee fifteen-percent in wage-loss disability and found that appellee was entitled to continued medical treatment from Dr. Smith. In so finding that she was still entitled to treatment, the ALJ noted that appellee began having additional trouble prior to her October 2004 at-home incident and that her condition appeared to be returning to its pre-existing condition at that time. The Commission affirmed and adopted the ALJ’s opinion.

#### *Standard of Review*

In reviewing decisions from the Workers’ Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission’s decision and affirm if that decision is supported by substantial evidence. *Smith*

*v. City of Ft. Smith*, 84 Ark. App. 430, 143 S.W.3d 593 (2004). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Williams v. Prostaff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). The issue is not whether the reviewing court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, we must affirm the decision. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). Normally, we only review the findings of the Commission and not those of the ALJ. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005). However, when the Commission adopts the conclusions of the ALJ, as it is authorized to do, we consider both the decision of the Commission and the decision of the ALJ. *Death & Permanent Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003).

#### *Statute of Limitations*

Appellants contend that appellee's claim was barred by Ark. Code Ann. § 11-9-702 (Repl. 2007). They argue that appellee filed a claim for initial benefits, not additional benefits, thus the claim had to be filed within two years of the additional injury. In the alternative, they argue that appellee's claim was barred because the statute of limitations was not tolled.

We do not reach the merits of this issue. It is well-settled that appellants have the obligation of presenting a record sufficient to demonstrate error. *See, e.g., Hudson v. Kyle*, 365 Ark. 341, 229 S.W.3d 890 (2006). Absent from the record are appellee's claim forms and a transcript of the May 2005 proceedings (from which they base part of their tolling argument). These documents are essential to determining whether their argument has merit. For these reasons, we summarily affirm.

#### *Wage-Loss Disability*

Appellants challenge appellee's entitlement to wage-loss disability benefits. They argue

that appellee's two subsequent injuries were not causally related to her compensable injury and were, therefore, not compensable. They also contend that she was not entitled to benefits because she was released to work with no restrictions. Finally, they assert that the additional award was erroneous because her compensable injury was not the major cause of her disability.

Pursuant to Ark. Code Ann. § 11-9-522(b)(1) (Repl. 2002), the Commission has the authority to increase a claimant's disability rating when a claimant has been assigned an anatomical impairment rating to the body as a whole. *See Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005). This wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Id.* In considering wage-loss disability, the Commission may consider such factors as the claimant's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity. Ark. Code Ann. § 11-9-522(b)(1).

First, appellants contend that the subsequent injuries were not related to the compensable injury. Even if this is the case, the existence of those unrelated injuries would not preclude an award of wage-loss disability. If a claimant suffers a permanent disability as a result of a workplace accident, that claimant is entitled to benefits. While subsequent unrelated injuries may make it difficult to determine how much of the disability is attributable to the workplace accident, the claimant is still entitled to benefits to the extent that she can show that her disability is the result of her workplace injury.

Second, appellants argue that appellee suffered no wage-loss disability because Dr. Smith released appellee to work with no restrictions. The ALJ interpreted this evidence as follows:

The record reflects that the claimant had disc herniations at multiple levels which were directly and causally related to the June 8, 2005, injury. The only logical

conclusion that can be drawn for Dr. Smith's subsequent release without restrictions is that the claimant was released without any additional restrictions. Accordingly, it is clear that the major cause of the claimant's disability and need for medical treatment was the June 8, 2002, injury. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a).

The interpretation of medical opinion is for the Commission, and its interpretation has the weight and force of a jury verdict. *E.g., Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998). The Commission's interpretation of the evidence here is supported by the evidence. Dr. Smith assessed a permanent impairment rating and permanent restrictions in March 2003. She was taken off work in November 2004, which was after her first at-home injury, and she was allowed to return by Dr. Smith in March 2005. This release can be reasonably interpreted to return her to work at the level she was working before the October 2004 injury without amending the permanent restrictions given in March 2003. In addition, this interpretation is supported by appellee's testimony that she asked Dr. Smith to release her to work and that she thought the release did not void the original restrictions placed upon her.

Finally, appellants argue that the compensable injury was not the major cause of her disability. They note that benefits are not awarded for a condition that results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. *See* Ark. Code Ann. § 11-9-102(4)(F)(iii) (Supp. 2007). However, there is no independent intervening cause unless the subsequent disability is triggered by an activity that is unreasonable under the circumstances. *Davis v. Old Dominion Freight Line, Inc.*, 341 Ark. 751, 20 S.W.3d 326 (2000). While appellants claim that appellee's subsequent injuries were independent intervening cause, they failed to present evidence showing that those injuries were caused by any unreasonable activity.

While appellee suffered two non-compensable injuries, the record supports an award of wage-loss disability based on the permanent impairment rating assigned as a result of the

admittedly compensable injury. We affirm on this point.

*Additional Medical Benefits*

Finally, appellants contend that appellee is not entitled to additional medical benefits after the October 2004 injury. They argue that any medical treatment after the October 2004 injury was related to the nonwork-related injuries, not the initial compensable injury.

Workers' compensation law provides that an employer shall provide the medical services that are reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Supp. 2007); *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Stone, supra*. A claimant may be entitled to ongoing medical treatment after the healing period has ended if the treatment is geared toward management of the injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

Appellants contend that any treatment after the October 2004 injury was related only to the October 2004 injury. They note the evidence that appellee had reached maximum medical improvement on March 19, 2003. However, an employer may be liable for treatment even after a claimant has reached maximum medical improvement. *Patchell, supra*. Therefore, the fact that appellee was receiving treatment after reaching maximum medical improvement, by itself, is of no consequence.

The only question here was whether appellee's current need for treatment was related to her compensable injury. The records show that she was having problems with her right leg giving out in July 2004, which was prior to her first at-home injury. The MRI taken after the October 2004 showed a new injury at L4-5, but there was no change at L5-S1. The note on May 3, 2006, indicated significant pain in her anterior hip, difficulty walking, and right-sided



pain. Again, appellee had injuries to the right side of her body prior to the first at-home injury. Even if these records show a new, unrelated injury, the record still supports a finding that Dr. Smith was still treating her for her compensable injury after October 2004. As long as Dr. Smith is treating appellee for injuries from the workplace accident, appellants are still liable. Accordingly, we affirm on this point as well.

Affirmed.

VAUGHT and BAKER, JJ., agree.